

# PLANNING COMMISSION MINUTES

FEBRUARY 1, 2007

## PUBLIC HEARING

## NEW BUSINESS

DOCKET NO. 9-22-06

### *(CONTINUED FROM JANUARY 18, 2007 PUBLIC HEARING)*

Change in zoning from R-4 Single Family Residential to C-1 Commercial, on property located at 9202R Lyneve Drive (Tax Block 1048 Lot 680), containing 6.24 acres and being in Louisville Metro.

Project Name:	Stonestreet Center
Owner/ Applicant:	TY & TR, LLC 920 Dupont Road Louisville, KY 40207
Attorney:	Paul B. Whitty Greenebaum Doll & McDonald 3500 National City Tower Louisville, KY 40202
Engineer/Designer:	Jim Griffin Evans/Griffin Inc. 4010 Dupont Circle Suite 478 Louisville, KY 40207
Existing Uses:	Vacant
Proposed Use:	Retail
Form District:	Neighborhood
Council District:	25 – Doug Hawkins
<b>Staff Case Manager:</b>	<b>Kristen Millwood, Planner II</b>

Notice of this public hearing appeared in **The Courier Journal** on January 3, 2007, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5<sup>th</sup> Street.)

# **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

## **PUBLIC HEARING**

## **NEW BUSINESS**

## **DOCKET NO. 9-22-06**

### **The following spoke in favor of this request:**

Paul B. Whitty, Greenebaum Doll & McDonald, 3500 National City Tower,  
Louisville, KY 40202

Jim Griffin, Evans/Griffin Inc., 4010 Dupont Circle Suite 478, Louisville, KY  
40207

Steve Marshall, 2510 Windy Way, Louisville, KY

### **The following spoke in opposition:**

Amanda Rowe, 9219 Wanlow Drive, Louisville, KY 40272

Christopher Pinkerton, 9100 Lyneve Drive, Louisville, KY

### **The following spoke neither for nor against:**

Diane Newton, representing Councilman Doug Hawkins' office, 615 West  
Jefferson Street, Louisville, KY 40202

### **Agency Personnel:**

Kristin Millwood, Planner II, Planning & Design Services

Julia Williams, Planner I/Landscape Architect, Planning & Design Services

Paula Wahl, Transportation, Planning & Design Services

### **AGENCY TESTIMONY:**

Kristin Millwood briefly reviewed the case. This case was deferred at the January 18<sup>th</sup> Planning Commission hearing. She distributed photos of a type of retaining wall that the applicant is planning to construct at the rear of the site. The Commission had previously requested that the applicant may improve the front of the designed structures with awnings or some other details. The applicant has since stated that they are not interested in adding those. The applicant's arborist met with the staff landscape architect on site on January 25, 2007 to discuss retaining trees at the front of the site. Staff's conclusions are listed in the staff report as "Conditions of Approval". Two new binding elements,

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

### **DOCKET NO. 9-22-06**

suggested by neighbors, should also be added (see staff report dated "February 1, 2007".)

Julia Williams, staff Landscape Architect, said that since the proposed rezoning and development plan are not construction plans it is difficult to determine where and what could actually be preserved on site. There are several significant trees within the site that are worth preserving. Not knowing the limits of disturbance for the site, she proposed the following conditions to be met before construction and site disturbance begin:

- The applicant shall submit a tree inventory of all 4 inch caliper and above trees between the parking lot and the property line. Cottonwoods, Box Elders, dead/dying trees do not have to be shown on the tree inventory.
- The applicant shall work with staff Landscape Architect in determining the location of the berm along Stonestreet Road. If possible the berm could meander along the sites frontage to ensure preservation of significant trees. The final location of the berm will be shown on the approved tree preservation plan and landscape plan.
- In general, all vines, underbrush, and non-native trees may be removed.

Ms. Williams said she is willing to work with the applicant in determining the extent of preservation along Stonestreet Road.

Commissioner Wells-Hatfield said she has seen trees staked for about 5-6 years after a project and its landscaping are completed. Ms. Williams said that most trees, unless they are on a steep slope, do not need to be staked. Stakes should be removed after a year.

### **SUMMARY OF TESTIMONY OF PROPONENTS:**

Paul Whitty, the applicant's representative, said they have had three neighborhood meetings at which the neighbors expressed great concern about a connection between Lyneve Drive and Stonestreet Road. He said that the applicant was asked to designate the right-of-way on the plan; Metro Public Works has not asked the applicant to make a connection, nor has anyone indicated that there are actually any plans to make a connection. Paula Wahl, Transportation Planner, commented on the right-of-way.

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

### **DOCKET NO. 9-22-06**

Regarding the proposed retaining wall, Mr. Whitty gave further details about the photos of the proposed wall that were distributed earlier to the Commissioners. He explained that this proposed wall is located behind the center and will not be visible from Stonestreet Road or the nearby residences. He also explained the reasons why the applicant did not want to accept staff's recommendations about canopies, etc. to the front elevations (extra expense, maintenance, prevention of light from entering the building, etc.)

Regarding the tree preservation, Mr. Whitty said he had asked staff to review this and the applicant agrees with staff's proposed conditions of approval.

He said the applicant has met with the neighbors since the last public hearing and has agreed to the neighbors' proposed binding elements. They are:

- 1) -that several uses be prohibited on the site by way of binding element:
  - quick cash or personal check cashing businesses
  - blood or plasma purchasing businesses
  - methadone clinics
  - sale of alcoholic beverages
  - pawn shops
  - nothing of a pornographic nature in any audio/video recording studio
  - nothing of a pornographic nature in book stores
  - nothing of a pornographic nature in boarding and lodging facilities
- 2) That this binding element could not be amended without coming back to the Planning Commission with first-class mail notice to the first and second tier property owners.

Mr. Whitty pointed out that this location is in a "dry" area, so there can be no alcohol sales.

### **SUMMARY OF TESTIMONY OF OPPONENTS:**

Christopher Pinkerton, 9100 Lyneve Drive, said the majority of neighbors are against having a right-of-way from Lyneve Drive

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

#### **DOCKET NO. 9-22-06**

Amanda Rowe asked about the sidewalk that is extending from the project into the subdivision. She said the neighbors do not want the sidewalk.

Commissioner Ernst said the applicant has not asked for a fee-in-lieu, no have they asked for a sidewalk waiver. Ms. Rowe said the neighbors are trying to keep their subdivision private.

Ms. Millwood said that sidewalks are required by the Land Development Code. She said the applicant has not applied for a fee-in-lieu, and she is not sure it would be granted anyway because this is a required feature.

#### **SUMMARY OF TESTIMONY OF THOSE NEITHER FOR NOR AGAINST:**

Diane Newton, representing Councilman Doug Hawkins, said the Councilman wanted to say that the developer has met with neighbors numerous times, and has made an effort to address residents concerns. She said residents have said that their neighborhood has been used as a cut-through for traffic, and that's why they don't want any connections from this development.

#### **REBUTTAL:**

Mr. Whitty said the applicant is willing to apply for a fee-in-lieu if the Commission decides the sidewalk would be an intrusion. Ms. Wahl commented on the connectivity issue. She said Public Works was looking at it as a connection for the neighbors to walk to the retail businesses that may locate there. She said it does not meet the criteria for a fee-in-lieu request.

**An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the February 1, 2007 proceedings.**

In a business session subsequent to the public hearing on this request, the Commission took the following action.

# PLANNING COMMISSION MINUTES

FEBRUARY 1, 2007

## PUBLIC HEARING

## NEW BUSINESS

## DOCKET NO. 9-22-06

### Rezoning

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

**WHEREAS**, a zone change from R-4 Residential to C-1 Commercial is requested for a 6.24 acre property located in the Neighborhood Form District near the northeast corner of the intersection of the Dixie Highway and Stonestreet Road (the "Subject Property") to permit the construction of a development comprised of approximately 34,560 square feet of neighborhood serving retail shops and medical offices; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Community Form/Land Use Guideline 1 and all applicable policies thereunder, including Policy 1.B.3 as the proposed development is located near the intersection of the Dixie Highway, a major arterial, and Stonestreet Road, a minor arterial road with a high level of connection to surrounding residential areas and the Neighborhood Form District encourages higher density/intensity uses provided that that site is located at arterial roadways and is compatible with nearby land uses (south: institutional – church and cemetery; north: large tract lot single family residential; east: single family residential subdivision; west: Paducah and Louisville Railroad line and right of way) and a high level of pedestrian and vehicular connections, including sidewalks, and shared parking and driving areas around the development, will be provided to increase access to the development, and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal complies with Community Form/Land Use Centers Guideline 2 and all applicable policies thereunder, including Policies 2.1, 2.2, 2.3, 2.4, 2.5, 2.7, 2.8, 2.9, 2.11, 2.12, 2.13, 2.14, 2.15 and 2.16 because the proposed center is appropriately located within the Neighborhood Form District as it is located at major roadway intersections and will serve area residents and the design of the site will mitigate the impacts on nearby residences not currently served by a center with a mix of uses logically associated and desirable in a center encouraging shared trips and reduce vehicle miles traveled in the area, and parking for the center will be shared, as will access to and through the center

# **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

## **PUBLIC HEARING**

## **NEW BUSINESS**

### **DOCKET NO. 9-22-06**

with utilities also shared, and utility easements located to provide access for maintenance and repair and parking facilities located to provide safe and convenient access to the proposed structures, as well as to facilitate the flow of pedestrians and bicyclists through the site and sidewalks will be provided to ensure safe pedestrian movement through the site and along Stonestreet Road connecting to the Timothy Hills subdivision at Lyneve Drive; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal complies with Community Form/Land Use Centers Guideline 3 and all applicable policies thereunder, including Policies 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.20, 3.21, 3.22, 3.23, 3.24, and 3.28 because the proposed development of the Subject Property will be compatible with area developments in the Neighborhood Form District, including existing development along Dixie Highway where the pattern of development provides smaller commercial developments such as the proposed development with neighborhood serving uses and the building design will be comparable to area buildings, and building materials will consist of brick/masonry and will be comparable to those used at other similar centers in the Metro area, and the development of the Subject Property will not result in the expansion of non-residential uses into existing residential areas since the Subject Property is vacant and has never been used for single-family uses and faces institutional uses (church and cemetery) across Stonestreet Road); and the R-4 zoning was applied many years ago since which time there have been numerous changes of an economic, physical and social nature making the R-4 classification inappropriate and the commercial zoning more appropriate, such as tremendous population growth, the construction of the Gene Snyder Freeway and the commercial development in the Dixie Highway corridor and interchanges so that the Subject Property's location at this intersection makes its development for commercial use more appropriate; and the site's location immediately adjacent to the east of the Paducah and Louisville rail line reducing the viability of developing the site under the existing R-4 single family zoning classification, and nuisances such as noise, dust and odor will not result as the proposed uses are not associated with these characteristics and traffic from the proposed development will not adversely affect adjacent roadways due to proposed roadway improvements and the development will draw traffic primarily from the neighborhood rather than from the region, as proposed uses at the Subject Property will be oriented toward the

# **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

## **PUBLIC HEARING**

## **NEW BUSINESS**

### **DOCKET NO. 9-22-06**

neighborhood rather than a larger area and a traffic study indicates only a 2.9% increase in traffic volume, and visual impacts on adjacent land uses and roadways will be minimal, as the proposed development will blend with adjacent area developments in the Neighborhood Form District and will include appropriate landscaping and buffering as required under the Land Development Code and lighting will be directed down and away from adjacent existing residential uses to the north and east and will comply with the requirements of the Land Development Code; and buffers in the form of landscaped areas and tree protection are used to provide appropriate transitions and to separate the proposed development from the few adjacent single family residential uses and buffers will separate these uses from the proposed parking and maneuvering areas to be included at the Subject Property with setbacks and lot dimensions comparable to adjacent and area commercial uses in compliance with the requirements of the Land Development Code; only a small parking area is adjacent to existing single-family uses and are situated on the other side of a protected tree canopy area at the eastern edge of the site; landscaping will be installed adjacent to these parking areas to provide screening as required under the Land Development Code; loading and delivery areas are not located adjacent to single family uses, but are at the rear of the site and adjacent to a largely vacant tract; and a single monument style sign is proposed for the Subject Property along Stonestreet Road to be shared by all tenants in Stonestreet Center compatible with other area signs and will otherwise comply with the requirements of the Land Development Code; and the Applicant has agreed to eliminate by binding element, certain uses in agreement with neighborhood concerns; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Community Form/Land Use Guideline 5 and all applicable policies thereunder, including Policies 5.1, 5.2, and 5.4 because there are no known historic resources, archaeological sites, or distinctive cultural features associated with this property; no steep or unstable slopes or wet or highly permeable soils on the site and a significant portion of the site will have tree canopy preservation areas as shown on the Development Plan as well as binding elements requiring trees to be identified for preservation at the front of the site; and



## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

### **DOCKET NO. 9-22-06**

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Marketplace Economic Growth Guideline 6 and all applicable policies thereunder including 6.2 and 6.6 because being located at the intersection of two major road systems ensures access between employment and population centers. The proposed development also is located appropriately as an activity center due to its location and potential nuisances have been mitigated by a creative site design that provides transitions, buffers and access so as to not adversely affect adjacent areas; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Mobility/Transportation Guideline 7 and all applicable policies thereunder, including Policies 7.1, 7.2, 7.3, 7.6, 7.9, 7.10, 7.13, 7.14 and 7.16 because the development includes the installation of sidewalks along Stonestreet Road and connecting to Lyneve Drive; and a left turn lane into the site will be constructed on Stonestreet Road which support the improvement of area roads to accommodate growth and support the use of alternative forms of transportation with access to surrounding land uses and additional right of way will be dedicated for the purpose of possibly connecting Lyneve Drive to Stonestreet Road in the future thus creating greater connectivity for the area road network; and joint and cross access will be provided as part of the development of the Subject Property to ensure that potential development on adjacent properties will have appropriate access connections; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Mobility/Transportation Guideline 9 and all applicable policies thereunder, including Policies 9.1 and 9.2 because sidewalks are incorporated into the design of the proposed development, both internally to connect the proposed uses, to adjacent property and TARC Routes 18 and 50 run adjacent to the Subject Property and the design of the proposed center encourages the use of transit and pedestrian as an alternative forms of transportation; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

#### **DOCKET NO. 9-22-06**

proposal conforms with Livability/Environment Guideline 10 and all applicable policies thereunder including Policies 10.3, 10.7 and 10.11 because the impervious surfaces are minimized as part of the development of the Subject Property and peak stormwater runoff rates after development of the Subject Property will not exceed peak stormwater runoff rates prior to development; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Livability/Environment Guideline 12 and all applicable policies thereunder including Policies 12.1, 12.2., and 12.8 because the letter dated June 24, 2005 from Tom Pinto, Technical Coordinator for the Louisville Metro Air Pollution Control District, concludes that the proposed development has no negative impact on the National Ambient Air Quality Standards for carbon monoxide and sidewalks will be installed along Stonestreet Road to facilitate pedestrian movement to and from the site as an alternative form of transportation; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Livability/Environment Guideline 13 and all applicable policies thereunder, including Policy 13.5 because the preservation of 9% of the existing trees on the Subject Property, and, an 8% tree canopy will be installed as is required under the Land Development Code and tree preservation areas along Stonestreet Road at the southeastern and southwestern portions of the site are provided and a parkway buffer with 4' berms are provided along with enhanced landscaping at the entrance creating an inviting an attractive focal point; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Community Facilities Guideline 14 and all applicable policies thereunder including Policies 14.2, 14.3, 14.4, 14.6, and 14.7 and the Subject Property is located in an area with existing utility service, including public water and sanitary sewer service is available to the site by a lateral extension and sewage flow will be treated at the MSD West County Wastewater Treatment Plant as set forth in a letter dated June 22, 2005 from Michael Ballard, Environmental Health Engineer, Louisville Metro Health Department and

# PLANNING COMMISSION MINUTES

FEBRUARY 1, 2007

## PUBLIC HEARING

## NEW BUSINESS

### DOCKET NO. 9-22-06

underground utilities will be installed at the Subject Property, and utilities will be placed in easements to provide access for maintenance and repair; and

**WHEREAS**, the Commission finds, based upon the staff report, committee reviews, submittals by the Applicant and public hearing testimony that the proposal conforms with Community Facilities Guideline 15 and all applicable policies thereunder including Policy 15.9 because fire protection for the site will be provided through the Pleasure Ridge Park Fire Protection District; and

**WHEREAS**, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

**WHEREAS**, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville/Jefferson County Metro Government that the change in zoning **from R-4 Single Family Residential to C-1 Commercial** on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Abstain, Queenan, Blake, Wells-Hatfield, and Hamilton.**

**NO: No one.**

**NOT PRESENT: No one.**

**ABSTAINING: Commissioners Ernst, Carlson, Howard, and Storm.**

## **Development Plan**

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

# PLANNING COMMISSION MINUTES

FEBRUARY 1, 2007

## PUBLIC HEARING

## NEW BUSINESS

## DOCKET NO. 9-22-06

**RESOLVED**, That the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan **SUBJECT** to the following binding elements:

### **Proposed Binding Elements - Docket No. 9-22-06**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 34,560 square feet of gross floor area.
3. Signs shall be in accordance with Parkway Standards.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

#### **DOCKET NO. 9-22-06**

- b. A minor subdivision plat shall be recorded dedicating additional right-of-way. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Canopy Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e. A Wetlands Determination and Mitigation is required from the US Army Corp of Engineers before construction approval.
- 7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
- 8. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system audible beyond the property line.
- 9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

#### **DOCKET NO. 9-22-06**

10. The property owner shall provide a cross over access easement if the property to the north is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
11. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the January 18, 2007 Planning Commission meeting.
12. No idling of trucks between the rear of the shopping center and adjacent single-family residences. No overnight idling of trucks shall be permitted on-site.
13. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
14. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
15. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers,

# PLANNING COMMISSION MINUTES

FEBRUARY 1, 2007

## PUBLIC HEARING

## NEW BUSINESS

### DOCKET NO. 9-22-06

maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.

- c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
- 16. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.
- 17. The following listed land uses, otherwise permitted in the C-1 Commercial zoning district, shall be prohibited in the subject property:
  - a. quick cash/personal check cashing businesses
  - b. pawn shops
  - c. methadone clinics
  - d. blood/plasma centers
  - e. Any businesses engaged primarily in the sale or distribution of pornographic ("adult") books, magazines, films, accessories, etc.

This additional binding element shall not be amended without a public hearing with first class mail notice to first and second tier property owners.

### **All plans setting out tree preservation areas must contain the following notes:**

- 1. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Tree in these areas may be removed during construction of homes or buildings on individual lots.
- 2. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the

## **PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

### **PUBLIC HEARING**

### **NEW BUSINESS**

### **DOCKET NO. 9-22-06**

applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

3. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
4. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
5. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.

**The vote was as follows:**

**YES: Commissioners Abstain, Queenan, Blake, Wells-Hatfield, and Hamilton.**

**NO: No one.**

**NOT PRESENT: No one.**



**PLANNING COMMISSION MINUTES**

**FEBRUARY 1, 2007**

**PUBLIC HEARING**

**NEW BUSINESS**

**DOCKET NO. 9-22-06**

**ABSTAINING: Commissioners Ernst, Carlson, Howard, and Storm.**